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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
Before The Honorable Jon S. Tigar, District Judge

STEPHEN BREAUX,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. C 19-00717-JST
	)	
ACCREDITED SURETY AND	)	
CASUALTY COMPANY, et al.,	)	
	)	
Defendants.	)	
<hr/>		
SHONETTA CRAIN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. C 19-01265-JST
	)	
ACCREDITED SURETY AND	)	
CASUALTY COMPANY, et al.,	)	
	)	
Defendants.	)	
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San Francisco, California  
Wednesday, April 24, 2019

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
RECORDING 2:09 - 2:24 = 15 MINUTES

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1 Wednesday, April 24, 2019

2:09 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE COURT: All right. Well, the matters are on  
5 for case management. There are a lot of you, and so I'm not  
6 going to do what I normally might do, and that is go around  
7 and ask everybody what they think we should talk about  
8 today. I think I have that reasonably well in hand.

9 What I am going to do is make some preliminary comments  
10 about the case, talk about some stipulations and so forth  
11 that you filed, address the disputes that are in your case  
12 management statement, and then I will at that time ask you  
13 all if there's anything that you were hoping to talk about  
14 today that we didn't get to.

15 Even though -- even though it's not exactly framed that  
16 way, this is a horizontal price fixing case. I have wanted  
17 to get a horizontal price fixing case for so long I cannot  
18 tell you. I've inherited one from Judge Conti which was  
19 filed during the presidency of Abraham Lincoln, and it's  
20 still pending on the federal docket, and eventually that  
21 case will end, just because all things come to an end, but I  
22 have not had one from its inception, at least not one that  
23 lasted very long. So I am very happy that you're all here.

24 This is a big case. I didn't need to tell you  
25 that. You can look around the room and see that for

1 yourselves. I want to encourage the Defendants as we go  
2 along to pick a spokesperson for the group as a whole, and  
3 then if you need to designate spokespersons for the  
4 individual Defendant groups, to do that. I'm going to make  
5 the same suggestions to Plaintiffs. You don't have to do  
6 that, but if you don't, I'll do it. It's just human nature.  
7 I'll decide who I think is easy to deal with and smart and a  
8 good communicator and appears to have some good positive  
9 relationship with his or her colleagues, and I'll just start  
10 talking more to that person. So if you want to get out  
11 ahead of that, you can, but you don't have to.

12 I have frequently thought that women and lawyers of  
13 color are under-represented in leadership roles in class  
14 action cases, and the reason I have frequently thought that  
15 is because it is a demonstrated fact, and I have a lot of  
16 class action cases here. So this is a topic that's widely  
17 written about, but I also have a normal (indiscernible) of  
18 anecdotal evidence of my own.

19 I note that there is at least one woman of color at the  
20 partner level on both sides of this case. That's a fact.  
21 So, to be clear, I'm not telling anyone which lawyers they  
22 should put in front of me. I'm not doing that. There are  
23 lots of experienced, well credentialed lawyers in the case.  
24 I've read some of your biographies already. I'm not trying  
25 to deny anyone platform for their skills. I know your

1 clients hired you for those skills, but there are going to  
2 be a lot of opportunities, and when I was practicing in  
3 front of judges, I liked to know how they think, how they  
4 thought, because it helped advance my clients' interests,  
5 and I'm just sharing with you that diversity is one of the  
6 factors that goes into effective advocacy in this courtroom,  
7 and you can do with that what you like.

8 I also granted all the motions to appear by telephone.  
9 I have to say that I find telephone appearances on matters  
10 of substance not to be as useful to me. I don't stop people  
11 from appearing by telephone usually if that's what they want  
12 to do, but when I was in practice, I liked to see the  
13 expression on the judge's face. I was worried that he might  
14 have an unhappy face when I was talking, for example, and I  
15 didn't know it. So I never wanted that to happen, and I do  
16 find that in-person communication on matters of substance is  
17 easier to do in person. On matters that are not, that are  
18 purely administrative, that's less true, and sometimes  
19 people just want to listen.

20 So, anyway, that's just a little more guidance to all  
21 of you as we go forward. I know it costs more money to come  
22 and be in court in person, and I understand that it's not  
23 always worth that.

24 Okay. Let's turn to the matters that are at issue in  
25 the case management statement. It's noted in there that the



1 Plaintiffs intend to file a motion for appointment of  
2 interim lead class counsel and an executive committee. I'd  
3 just like to set a deadline for the filing of that motion.  
4 Somebody want to propose one?

5 MR. HARVEY: Your Honor, Dean Harvey, Lieff,  
6 Cabraser, Heimann and Bernstein, on behalf of the  
7 Plaintiffs.

8 THE COURT: Can you step to the microphone,  
9 please. We are being recorded today, but you're on the  
10 Court's electronic recording system, which means if you're  
11 not talking directly into a microphone, for all intents and  
12 purposes, after today you will not have talked.

13 Mr. Harvey?

14 MR. HARVEY: I would suggest a week from today,  
15 your Honor.

16 THE COURT: All right. That's the May 1, 2019,  
17 and that will be the deadline.

18 Okay. The parties submitted -- well, this will just  
19 take a second. I issued an order a few days ago about the  
20 CAFA Local Controversy Exception. I just wanted to narrow  
21 that down, and the parties have submitted a stipulation that  
22 does narrow that down. So I don't think anything further  
23 needs to be said about that. I appreciate your taking that  
24 off the Court's -- taking that off the table.

25 There's a stipulated proposed pretrial consolidation

1 order. It looks fine with one exception, and that is that  
2 the mechanism for adding a new case, as it's described in  
3 this order, essentially works like this. The parties point  
4 out to the clerk's out what they think is a consolidated  
5 case, and then the clerk just sort of automatically  
6 consolidates the case, and that essentially shifts the  
7 burden back onto the other parties in that case to file an  
8 objection within 10 days.

9 I think the proper procedure -- and we have a model  
10 rule -- or, excuse me, a model stipulation of proposed order  
11 in securities fraud class actions that sets out this  
12 procedure, and I would ask the parties just to go into that  
13 form order, which is on our website, import that procedure  
14 into your order and resubmit.

15 Essentially what happens is that the burden on you to  
16 relate the cases to me using the related case provisions of  
17 Local Rule 3-12, and then just try a motion to consolidate.  
18 It's probably going to be stipulated. I can't imagine  
19 anybody, looking at all the people in this room, is going to  
20 want to fight you about consolidation. So I know your  
21 mechanism is administratively a little easier, but I like  
22 our model order. I won't even set a deadline for that.  
23 It's in your interest to get it in front of me, and I'll  
24 just let the incentives work the way they normally would.

25 Okay. Turning to the joint case management statement.

1 A little saber rattling in there about whether people  
2 participated in good faith in the Rule 26 conference or  
3 whether there even was a Rule 26 conference. I think there  
4 was one. It's just that the Defendants don't want to give  
5 you any discovery right now, and that dispute comes up all  
6 the time in cases like this. We don't even have an  
7 operative complaint. I mean, we do, but the parties have  
8 stipulated that a consolidated complaint is going to be  
9 filed. So I honestly don't know how we could conduct  
10 discovery because if there was a fight, I'd have to engage  
11 in a Rule 26 analysis, and I wouldn't be able to do it  
12 because I don't even know what the claims are. So I don't  
13 think we're going to have any discovery right now. I mean,  
14 if someone wants to try to talk me out of that, that's fine.  
15 I'm happy to have a more reasoned debate if you want, but I  
16 think we've got to at least have a consolidated complaint in  
17 front of us, and then if people want to have to fight about  
18 whether to have discovery or not, they can.

19 I want to talk about the briefing proposals, and this  
20 seems like a good time to tell you -- and if you've been in  
21 here before in front of me, you've heard me say this already  
22 -- I'm a baseball arbitration thinker on things like this.  
23 Things like this are -- when should the deadline for  
24 something be? What should the page limits be? These are  
25 matters that are almost totally within the judge's

1 discretion and are not the subject of clear rules. So by  
2 baseball arbitration thinker, what I mean is I will try very  
3 hard to choose one party's proposal and not go a third way  
4 in every instance, because what I want to discourage is one  
5 party taking the position that they actually know is not  
6 their best offer and is a little bit unreasonable because  
7 they think the Court is going to split the baby. I will try  
8 very hard not to split the baby.

9 I don't think either side has its best offer on the  
10 table right now really. I think we ought to be able to come  
11 to an agreement that tells me how many pages I have to read  
12 and my law clerks have to read. I don't really think the  
13 Plaintiffs think that 30 pages gets it done. They don't  
14 exactly say that. They say it's 30 pages and then the  
15 Defendant should have to justify every additional page. And  
16 the Defendants' proposal is simply too open ended. And the  
17 idea that, you know, I just have enough experience with this  
18 that when -- that when counsel tell me, "Well, just rely on  
19 us to keep the pages to a minimum," there just usually is  
20 not a clear understanding of the opportunity, cost or time  
21 in a federal chambers.

22 You are not even in the top three of the biggest cases  
23 on my docket. And I say that not because I don't love this  
24 case. I love this case. I've been bitching and moaning to  
25 the antitrust section for three years that I haven't been

1 able to get a case like this. But I still have to take care  
2 of my other cases. So by Friday of this week, at noon, you  
3 will submit either a jointly stipulated proposal that  
4 describes the gruesome page limits that will be filed at the  
5 motion to dismiss stage or competing proposals, and I'll  
6 just try to pick one.

7 I'm trying to -- I will always try to have enough  
8 deadlines in the case to keep some pressure on the case.  
9 Maybe you're not really able to do this until the  
10 consolidated complaint is filed, but I think I'd rather  
11 let's just take our best shot and set some limits. Then  
12 when the consolidated complaint is filed, if people have  
13 second thoughts about the limits, then we can revisit the  
14 question. But I'd like us all to know what we're up  
15 against.

16 And, by the way, I'm not always the clearest speaker  
17 from the bench. So if anything I'm saying this afternoon  
18 isn't clear, let me know. I'd be happy to explain or try  
19 again.

20 I wonder if it's too early to start thinking about ADR.  
21 I sort of think it is. But it's on the to do list for  
22 federal judges at case management conferences. So it's on  
23 my checklist. When you get there, if you ever do, it's some  
24 case to try. Everyone knows what bail is. But, anyway,  
25 when you get there, if you do, on settlement, I think I

1 would probably need competing expert damages analysis.  
2 That's just a for later thought. I don't want some -- I  
3 don't want lawyers on the back of a napkin, "Hey, this  
4 settlement is great." I'm sort of curious how you could  
5 look at information you need to do one actually. But that's  
6 for later.

7       And then lastly -- and then I'll turn it over to you --  
8 on scheduling, my tentative inclination is to adopt in gross  
9 form the Defendants' proposed schedule to -- to actually set  
10 that case management conference before the ruling to create  
11 some pressure on me to get a ruling out and then see you.  
12 At that time, I would set a schedule through class  
13 certification, which is my practice in class cases. I don't  
14 set trial dates until after we've gotten on the other side  
15 of that motion.

16       That's what I've got. Who wants to say -- who would  
17 like to address the Court this afternoon?

18               MR. HARVEY: Your Honor, Dean Harvey again on  
19 behalf of Plaintiffs. I don't believe we have any further  
20 comments, reserving a right to respond to anything  
21 Defendants may raise.

22               MR. CIESLAK: Good afternoon, your Honor. I'm Jon  
23 Cieslak from Cooley. I represent Defendants Seaview and Two  
24 Jinn, but I'm going to be quarterbacking for all Defendants  
25 today, and I'll make it very simple and follow Mr. Harvey's

1 lead and say I think we've covered everything we need to do  
2 today.

3 THE COURT: Great. Hold on just one second. I  
4 want to -- would you pronounce your last name again, please?

5 MR. CIESLAK: Cieslak.

6 THE COURT: Mr. Cieslak. Very good. Okay.

7 MR. CIESLAK: Thank you.

8 THE COURT: Well, I thought it was going to be a  
9 long flight, but it turned out it was more of a commuter  
10 deal.

11 Thank you all very much. That concludes the hearing.

12 ALL: Thank you, your Honor.

13 (Proceedings concluded at 2:24 p.m.)  
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I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



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Thursday, May 2, 2019